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STATE OF NEW JERSEY  
DEPARTMENT OF LAW & PUBLIC SAFETY  
DIVISION OF CONSUMER AFFAIRS  
STATE BOARD OF DENTISTRY

IN THE MATTER OF THE  
APPLICATION OF

**BRYAN HARVEY, D.D.S.**

TO PRACTICE DENTISTRY  
IN THE STATE OF NEW JERSEY

Administrative Action

**ORDER**

This matter was originally opened to the State Board of Dentistry upon an application for a residency training permit from Bryan Harvey, D.D.S. Following a thorough review of Dr. Harvey's disciplinary history in the State of Ohio (his license to practice dentistry had been suspended on March 14, 2001 and subsequently reinstated on April 18, 2001 by the Ohio State Board of Dentistry based on his misuse of a controlled dangerous substance, specifically Demerol), and his actions in pursuing recovery (he had completed an in-patient treatment program and continued to participate in a monitoring program), the Board, in October 2001, granted Dr. Harvey the residency training permit in oral and maxillofacial surgery with restrictions.

Dr. Harvey has now applied for a license to practice dentistry in this State. He intends to continue in his residency training program at Saint Joseph's Hospital and Medical Center for the next year. Licensure will allow him to have prescription privileges. In support of the application, Dr. Harvey has provided a report from the Physician's Health Program of the Medical Society of New Jersey which attests to his ongoing sobriety.

Having heard the testimony of Dr. Harvey and having reviewed the materials presented, the Board is persuaded that, with the restrictions outlined in this order, granting a license to practice dentistry to Dr. Harvey is consistent with the public health, safety, and welfare. As the Board expressed in its order granting the residency training permit, the Board will not tolerate any deviation from the terms of this order. The entry of this consent order does not limit the right of the Attorney General to pursue an application for relief before the Board, including an application for the temporary suspension of respondent's permit pursuant to N.J.S.A. 45:1-22 should the Board or the Attorney General determine that Dr. Harvey has not complied with this order. The Board finds the restrictions set forth here are adequately protective of the public health, safety and welfare.

THEREFORE, IT IS ON THIS 1<sup>st</sup> DAY OF AUGUST, 2002,

ORDERED:

1. (a.) Dr. Harvey shall submit to random urine sampling once a week at a laboratory facility approved by the Board. The facility shall not be part of the residency program. The urine testing requirement shall continue until further order of the Board expressly reducing or discontinuing testing. Dr. Harvey shall be provided with specific directions for the protocol of the testing procedure and the location of the laboratory facility by the Executive Director of the Board. The urine monitoring shall be conducted with direct witnessing of the taking of the samples as designed by the laboratory facility. The initial drug screen shall utilize appropriate screening techniques and all confirming tests and/or secondary tests will be performed by gas/chromatography/mass spectrometry (G.C./M.S.). The testing procedure shall include a forensic chain of custody protocol to ensure sample integrity and to provide documentation in the event of a legal challenge.

(b.) All test results shall be provided to Kevin B. Earle, Executive Director of the Board, or his designee in the event he is unavailable. The Board also will retain sole discretion to modify the manner of testing in the event technical developments or individual requirements indicate that a different methodology or approach is required in order to guarantee the accuracy and reliability of the testing.

(c.) Any failure by Dr. Harvey to submit or provide a urine sample within twenty-four (24) hours of a request will be

deemed to be equivalent to a confirmed positive urine test. In the event Dr. Harvey is unable to appear for a scheduled urine test or provide a urine sample due to illness or other impossibility, consent to waive that day's test must be secured from Kevin B. Earle, or his designee. Personnel at the lab facility shall not be authorized to waive a urine test. In addition, Dr. Harvey must provide the Board with written substantiation of his inability to appear for a test within two (2) days, e.g., a physician's report attesting that he was so ill that he was unable to provide the urine sample or appear for the test. "Impossibility" as employed in this provision shall mean an obstacle beyond the control of Dr. Harvey that is so insurmountable or that makes appearance for the test or provision of the urine sample so infeasible that a reasonable person would not withhold consent to waive the test on that day.

(d.) In the event Dr. Harvey will be out of the State for any reason, the Board shall be so advised so that arrangements may be made at the Board's discretion for alternate testing. The Board may, in its sole discretion, modify the frequency of testing or method of testing during the monitoring period.

(e.) Any urine test result showing creatinine levels below 20 mg/dL and a specific gravity below 1.009 shall be deemed a confirmed positive urine test.

(f.) Dr. Harvey shall familiarize himself with all foods, food additives or other products (such as poppy seeds) which may affect the validity of urine screens, be presumed to possess that knowledge, and shall refrain from the use of such substances. Ingestion of such substances shall not be an acceptable reason for a positive urine screen and/or failure to comply with the urine monitoring program.

2. Dr. Harvey shall continue his participation with the Physicians' Health Program ("PHP") and shall have monthly face to face contact with representatives from that program. Dr. Harvey shall comply with after care as directed by the PHP and shall comply with any recommended therapeutic regime for treatment or counseling. Dr. Harvey shall be responsible for ensuring that any treating psychologist and any other person(s) providing therapy for his addiction provide the Board with quarterly reports regarding his progress in counseling.

3. Dr. Harvey shall attend support groups, including NA or AA not less than three (3) times per week. Dr. Harvey shall provide evidence of attendance at such groups directly to the Board. If Dr. Harvey has discontinued attendance at any of the support groups without obtaining approval of the Board, he shall be deemed in violation of this Order.

4. Dr. Harvey shall abstain from the use of alcohol and controlled dangerous substances and shall not possess any

controlled dangerous substances except pursuant to a bona fide prescription written by a physician or dentist for good medical or dental cause in his own treatment. In addition, Dr. Harvey shall advise any and all treating physicians and/or dentists of his history of substance abuse. Dr. Harvey shall cause any physician or dentist who prescribes medication which is a controlled dangerous substance to provide a written report to the Board together with patient records indicating the need for such medication. Such report shall be provided to the Board no later than two (2) days subsequent to the prescription in order to avoid confusion which may be caused by a confirmed positive urine test as a result of such medication.

5. Dr. Harvey shall provide any and all releases to any and all parties who are participating in the monitoring, treating or other program as outlined in this order, as may be required in order that all reports, records, and other pertinent information may be provided to the Board in a timely manner. With regard to any requirement for submission of the quarterly reports to the Board, the beginning of the first quarter is deemed to have commenced August 1, 2002.

6. Dr. Harvey shall ensure that the director of the residency training program continue the established protocols to ensure that any administration of drugs by Dr. Harvey by parenteral routes shall be monitored by another licensed health care

professional with all charts related to the administration countersigned and all drugs accounted for.

(a.) Dr. Harvey shall provide a copy of this order and any further orders of the Board related to him to the director of the residency program.

(b.) Dr. Harvey shall provide to the Board a signed statement by the director of the residency program in which he accepts responsibility for his or her role in creating the protocols and ensuring compliance with those protocols and in which he or she agrees report any relapses or suspected relapses by Dr. Harvey to the Board of Dentistry within twenty-four (24) hours thereof.

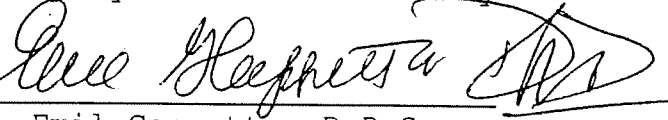
7.(a.) Dr. Harvey shall be subject to an order of automatic suspension of his license upon the Board's receipt of any information which the Board, in its sole discretion, deems reliable demonstrating that respondent has failed to comply with any of the conditions set forth in this consent order, including but not limited to report of a confirmed positive urine, or a prima facie showing of a relapse or recurrence of alcohol or drug abuse.

(b.) Dr. Harvey shall have a right to apply for removal of the automatic suspension on ten (10) days notice to the Board and to the Attorney General. The Board may hold a hearing on that application before the full Board or before a committee of the Board. In the event a committee hears the application, its action

shall be subject to ratification of the full Board at its next scheduled meeting. In a hearing seeking removal of the automatic suspension, any confirmed positive urine shall be presumed valid.

New Jersey Board of Dentistry

By.

A handwritten signature in cursive script, appearing to read "Emil Cappetta", followed by a large, stylized flourish or initial.

Emil Cappetta, D.D.S.  
President